

EXHIBIT 10

From: David McMahon [wvdavid@wvdavid.net]
Sent: Tuesday, October 06, 2020 10:29:44 AM
To: Ted Boettner
Subject: Re: Fwd: BILLION DOLLAR ORPHANS Why millions of oil and gas wells could become wards of the state
Attachments: DiversifiedDisclosuresShowingFutureInabilityToPlug.pdf

HI

SEE ALL CAPS BELOW.

On 10/5/2020 2:22 PM, Ted Boettner wrote:

Thanks Dave! You say both the drillers and the bonding companies would rather hold leases than pay to plug orphaned wells. But, how do they avoid the requirement?

LETS START WITH A TERMINOLOGY MISNOMER. THE STATUTE CALLS WELLS THAT HAVE NOT PRODUCED FOR 12 MONTHS "ABANDONED" AND REQUIRES THEM TO BE PLUGGED (UNLESS THEY FILE TECHNICAL STUFF WITH THE STATE THAT SHOWS THEY HAVE A "BONA FIDE FUTURE USE" -- BUT THOSE REQUIREMENTS ARE PRETTY STRICT SO IT RARELY HAPPENS). BUT THOSE WELLS ARE STILL UNDER THE BOND OF ONE OPERATOR OR ANOTHER SO THEY ARE NOT "ORPHANED". WELLS BECOME ORPHANS WHEN THE COMPANY GOES OUT OF BUSINESS (AND QUITS PAYING THE BOND PREMIUM). WITHOUT A BOND THEY HAVE TO CEASE PRODUCTION FROM WELLS, BUT THEY ALREADY HAVE QUIT SO (I THINK THIS IS TRUE) UNLESS THE STATE PROCEEDS AGAINST THE BOND DURING THE YEAR FOR WHICH THE PREMIUM IS PAID, THE BOND IS NOT RECOVERABLE. AND THE STATE HAS BEEN SO NEGLIGENT THAT THE 50,000 BOND WILL NOT TOUCH THE SCORES OF UNPLUGGED WELLS.

THE DRILLER HAS TWO INCENTIVES TO NOT PLUG. FIRST, OBVIOUSLY, IT COSTS A LOT OF MONEY -- i HAVE HEARD AS LOW AS \$10,000 FOR A SHALLOW WELL IN GOOD SHAPE. THE ORPHANS PLUGGED BY THE STATE AVERAGE ABOUT \$65,000 BECAUSE OF CONDITION AND ACCESS ISSUES. SOME VERY OLD WELLS HAVE NO REAL CASING AND ESSENTIALLY HAVE TO BE RE-DRILLED AND COST A LOT MORE THAN THAT.

SECOND INCENTIVE, IF THE LEASE IS OVER BECAUSE THE WELL IS NO LONGER "PRODUCING IN PAYING QUANTITIES", AND IF THE DRILLER LATER DECIDES TO DRILL AGAIN ON THE PROPERTY, THE DRILLER HAS TO GO OUT AND FIND ALL (OR AT LEAST 75%) OF THE HEIRS WHO OWN A SHARE IN THE MINERAL INTEREST AND GET THEM TO SIGN NEW LEASES. THAT WAS A BIG ENOUGH PAIN BEFORE HORIZONTAL DRILLING WHEN THEY PAID \$1 AN ACRE SIGNING BONUS FOR A 12.5% LEASE, BUT NOW IF THEY WANT TO DRILL A MARCELLUS WELL THE SIGNING BONUS FOR A NEW MODERN LEASE IS AT LEAST \$1000 AN ACRE MAYBE UP TO \$4000 IN SOME PLACES, AND THE ROYALTIES ARE 14% TO 18%. SO VERY HUGE INCENTIVE TO KEEP LEASE IN EFFECT.

IF THE DRILLER HAS REPORTED TO THE STATE THAT THE WELL HAS QUIT PRODUCING AT ALL, IT IS ABANDONED AND THINGS ARE PRETTY CLEAR THAT IN ADDITION TO BEING REQUIRED TO BE PLUGGED THE LEASE IS UNDENIABLY OVER.

BUT EVEN IF IT IS ABANDONED, IF IT IS NOT PLUGGED IT GIVES THE DRILLER A LITTLE LEVERAGE TO SAY THE LEASE COULD STILL BE INEFFECT IF HE GOT THE WELL PRODUCING AGAIN. A LOSER IN COURT IF YOU GET THERE, BUT LEVERAGE UNTIL . . .

BUT WHAT IF IT IS PRODUCING JUST A LITTLE. THE DRILLER SAYS "IT IS NOT PRODUCING MUCH, BUT IT IS MAKING A LITTLE PROFIT OVER EXPENSES, SO IT IS PRODUCING IN PAYING QUANTITIES AND THE LEASE IS STILL IN EFFECT. SO IF A DIFFERENT DRILLER COMES AND OFFERS A MODERN LEASE FOR A LOT MORE MONEY THE MINERAL OWNERS IS STUCK HAVING TO GO TO COURT AND WIN A BATTLE OF DISCOVERY AND ACCOUNTING EXPERTS TO SHOW THAT THE WELL IS NOT PRODUCING IN PAYING QUANTITIES AND THE LEASE IS OVER SO THE MINERAL OWNER WOULD BE FREE TO SIGN A LEASE WITH ANOTHER DRILLER. THE TIME FRAME FOR THAT HAPPENING IS TOO LONG TO BE PRACTICAL.

Do they claim the orphaned wells are still "in production? And, if they do, couldn't the problem be addressed by means of more stringent contractual criteria?

TRUE, LEASES COULD BE BETTER WRITTEN, BUT UNLIKE MOST CONTRACTS PEOPLE SIGN, LIKE FOR BUYING CARS OR HOUSES, EVERY WORD IS DRAFTED BY THE COMPANY LAWYER BECAUSE THERE ARE NOT CONSUMER PROTECTIONS. THE COMPANIES DRAFT THEM AND THE MINERAL OWNER IS GENERALLY MORE CONCERNED WITH NEGOTIATING THE SIGNING BONUS, ROYALTY, SURFACE USE LIMITATIONS ETC. THAN THINKING DECADES DOWN THE ROAD EVEN IF THEY HAVE A LAWYER THAT UNDERSTANDS THE PROBLEM. IN FACT SOME LEASES DRAFTED BY DRILLERS I SEE NOW HAVE PROVISIONS THAT SAY AS LONG AS THEY PAY \$1 OR \$5 A YEAR THE LEASE STAYS IN EFFECT EVEN IF THERE IS NO PRODUCTION. I HAVE TO FIGHT TO GET THAT LANGUAGE OUT.

If industry players are capable of avoiding bonding requirements, why wouldn't they be equally capable of avoiding any other financial assurance requirement, including payments to an escrow account?

THEY DON'T AVOID BONDING REQUIREMENTS, THEY COMPLY BUT REQUIREMENTS ARE WORTHLESS. BUT YOU MAKE A GOOD POINT, EVEN IF MY IDEA OF SETTING UP AN ESCROW IS REQUIRED IT NEEDS A GOOD, SELF EXECUTING ENFORCEMENT MECHANISM. I NEED TO THINK ABOUT THAT.

Just curious. Thanks, Ted

I DIDN'T THINK AT THE START IT WOULD BE A LONG ANSWER OR I WOULD HAVE CALLED!

THE THING INDUSTRY SHOULD HAVE THE FEWEST ARGUMENTS AGAINST IS A SINGLE WELL BOND -- NO MORE BLANKET BONDS. THE NEXT EASIEST AREA TO ATTACK IS TRANSFERS. SEE ATTACHED. I ALWYAS KNEW BIG COMPANIES WITH THE RESOURCES TO PLUG WELLS "SOLD" THEM TO SMALLER COMPANIES WHO WOULD MILK THEM AND THEN GO OUT OF BUSINESS WITHOUT PLUGGING THEM. THIS COMPANY GOT INVESTORS ON A BRITISH STOCK EXCHANGE TO BUY LOTS AND LOTS OF WELLS FROM THE BIG GUYS TO DO JUST THAT. IT IS THE FIRST TIME I CAN DOCUMENT WHAT HAPPENS.

BUT ANY IMPROVEMENTS, ESPECIALLY GOOD ONES, WILL BE A HARD FIGHT. A LITTLE BETTER CHANCE WITH MITCH CARMICHAEL GONE.

DAVE

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Begin forwarded message:

From: David McMahon <wvdavid@wvdavid.net>
Subject: Re: BILLION DOLLAR ORPHANS Why millions of oil and gas wells could become wards of the state
Date: October 2, 2020 at 4:45:49 PM EDT
To: Ted Boettner <ted@ohiorivervalleyinstitute.org>
Reply-To: wvdavid@wvdavid.net

See next email in response.

I see a little more now why plugging the deep wells is a problem/more expensive.

On 10/1/2020 4:07 PM, Ted Boettner wrote:

Dave, check out this report. For WV they estimate \$8 billion in costs to plug orphan wells to plug orphan wells.

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